

November 30, 1998

Carol Browner, Administrator
United States Environmental Protection Agency
Air and Radiation Docket and Information Center 6102
Attn: Docket No. A-97-43
401 M Street SW
Washington, DC 20460

Re: Comments on Proposed Findings on
Section 126 Petitions

Dear Administrator Browner:

The State of Indiana appreciates the opportunity to provide comments on the USEPA's proposed findings of significant contribution under Section 126 of the Clean Air Act. These proposed findings were published in the Federal Register on October 21, 1998, with a November 30 comment deadline. By separate letter, Indiana is also submitting comments on a companion proposal published by USEPA on the same day: the proposed Federal Implementation Plan to Reduce the Regional Transport of Ozone.

In 1995, states throughout the eastern half of the country began discussing the need for a truly regional effort to evaluate the formation and transport of ozone. Working with USEPA, these states formed the Ozone Transport Assessment Group. Since that group was established, there has been significant progress in our understanding of the science and policy issues associated with addressing this serious public health and environmental issue. These efforts, which have included not only states and USEPA, but also local government, environmental groups, industry associations and individual businesses, citizens and others, have culminated in one of the most significant regulatory actions since the Clean Air Act of 1990 was promulgated: the nitrogen oxides reduction rule, issued by USEPA in September 1998.

The two proposed actions issued by USEPA on October 21, 1998, are closely related to the final NO_x rule. The one that is the subject of this comment letter is a proposed finding on petitions filed by eight northeastern states alleging that sources in a number of upwind states are emitting pollutants in amounts that significantly

contribute to those downwind states' inability to comply with the national ambient air

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quality standard for ozone. The petitions were filed under Section 126 of the Clean Air Act, which addresses interstate air pollution. In the proposed rule, USEPA finds that Indiana sources contribute to nonattainment of the one hour ozone standard, the eight hour ozone standard, or both in the petitioning states of Connecticut, New York and Pennsylvania. It finds that Indiana sources do not contribute to nonattainment in Rhode Island, Massachusetts, Maine, New Hampshire, and Vermont.

This letter contains Indiana's comments on the proposed rule. The comments focus on technical and policy issues, rather than legal issues. Specific comments on USEPA's modeling and other technical issues are contained in Attachment 1. In addition, Indiana filed comments on USEPA's Advance Notice of Proposed Rulemaking. That comment letter, dated, June 1, 1998, is incorporated herein by reference and attached as Attachment 2. Indiana also incorporates herein comments filed on the Proposed Nitrogen Oxides Reduction Rule and Supplemental Proposal for that rule. See Attachment 3. Finally, Indiana incorporates herein by reference its November 30, 1998 comment letter on the proposed Federal Implementation Plan and the exhibits to that letter.

1. Because there is no demonstration that Indiana sources contribute significantly to nonattainment in downwind states, USEPA should deny the Section 126 petitions with respect to Indiana.

Indiana agrees with USEPA's finding that Indiana sources do not contribute significantly to nonattainment in Rhode Island, Massachusetts, Vermont, New Hampshire and Maine. Based on the analysis Indiana has done of the modeling information that is available, Indiana does not agree with USEPA's conclusion that sources in Indiana contribute significantly to ozone violations in Connecticut, New York and Pennsylvania and believes that those petitions should be denied as well.

The Ozone Transport Assessment Group found, and Indiana agreed, that there is interstate transport of ozone and ozone precursors throughout the eastern half of the United States. However, the Ozone Transport Assessment Group's conclusions were that transport was on the order of several hundred miles. Indiana is moving ahead expeditiously with practical steps, which will include significant NOx reductions, to reduce transport of pollutants that may affect Indiana's immediate neighbors and address air quality within Indiana itself.

Indiana also does not agree with USEPA's approach of defining "significant" as the amount of reduction that can be achieved with what USEPA has determined to be cost effective controls. Significance must be defined by air quality impact, not

economics.

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It cannot reasonably be concluded, based on the modeling done to date, that Indiana contributes significantly to states as far away as these three. Moreover, additional modeling performed by the Lake Michigan Air Directors Consortium supports the conclusion that the effect of emission reductions in Indiana will be insignificant to undetected in Pennsylvania and states to the east. More detailed comments are provided in Attachment 1 on this issue.

2. USEPA should have provided a longer comment period, and better access to its technical analysis.

Given the significance of the issues involved in this rulemaking, and the extent of technical analysis developed by USEPA to support its proposed findings, USEPA should have provided additional time for the public to review and comment. Although the modeling analysis is basically that used for the NO_x reduction rule, there are differences in the inventories that are of concern. In addition, the findings in this rulemaking are much more specific and directed to individual states, both as contributors and recipients, so the review required of the modeling analysis is different. Moreover, as described in more detail in the attached technical comments, USEPA has not provided sufficient explanation of many technical issues related to the modeling, including modeling protocols and episode selection criteria.

In order to address this, USEPA should make all that information available and provide additional time, at least sixty days, for the public to provide feedback. I urge USEPA to repropose its action on these petitions, after affording the public the full technical information and explanation of the proposed granting or denial of the petitions.

3. Indiana does not agree that the Consent Decree reached under the Section 126 litigation should drive the deadlines of the significant regulatory actions required by the NO_x SIP call.

As Indiana has commented in the context of other proposed rules, the deadlines USEPA has established for the implementation of NO_x controls under the NO_x reduction rule are extremely aggressive. States must submit a fully developed NO_x control rule by September 1999. Because USEPA is still taking comment from states and others on inventory issues, the budget for each state will not even be final until winter or spring of 1999, which means that states have well under one year from the

date the budgets will finally be established to put this significant program in place. USEPA has indicated that it will implement the federal NOx plan by November 1999, two months after the deadline for state submittals, for states that have not submitted

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a plan. The deadline of 2003 for implementation of required controls is also extremely aggressive and may lead to power shortages, as Indiana and many other commenters have described in other comments.

It appears that these timeframes have been driven by the Consent Decree between USEPA and the Section 126 petitioners. While Indiana agrees with the approach that these actions be coordinated in terms of substantive relief or remedy, the Section 126 litigation should not drive timeframes for the NOx reduction rule, which is based on Section 110 of the Clean Air Act, and especially should not drive those timeframes to unreasonable or impractical deadlines. The result will be that important public policy decisions that have far ranging implications may be made without sufficient opportunity for public review, input and debate.

Again, Indiana appreciates the opportunity to comment on this proposed rulemaking and looks forward to discussing these issues with USEPA before a final rule is issued.

Sincerely,

/ s /

John M. Hamilton
Commissioner

Attachments

cc: Joyce Martin
Stephen Rothblatt